

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

MARTIN MARIETTA MATERIALS,
INC., JANE C. SULLIVAN, HILDA C.
DILL,

Defendants.

Civil Action No. _____

COMPLAINT

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

NATURE OF THE ACTION

1. This is a civil action for injunctive relief and recovery of costs under Sections 106(a) and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. §§ 9606(a) and 9607. The United States seeks injunctive relief to remedy conditions in connection with the release or threatened release of hazardous substances into the environment at the Reasor Chemical Company Site ("Site") in Castle Hayne, New Hanover County, North Carolina. The United States also seeks to recover unreimbursed costs

incurred, and to be incurred, for response activities at the Site.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action, and the Defendants, pursuant to Sections 106(a), 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a), 9607(a) and 9613(b), and under 28 U.S.C. §§ 1331 and 1345.

3. Venue is proper in this District under Sections 106(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9606(a) and 9613(b), and 28 U.S.C. § 1391(b) and (c), because the claims arose, and the threatened and actual releases of hazardous substances occurred, within this judicial district.

DEFENDANTS

4. Defendant Martin Marietta Materials, Inc. ("MMMI") is a corporation that was organized and incorporated under the laws of the State of North Carolina in November 1993, and does business in the State of North Carolina.

5. MMMI is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

6. Defendants Jane C. Sullivan and Hilda C. Dill ("Sullivan and Dill") are natural persons residing in the State of North Carolina.

7. Sullivan and Dill are "persons," within the meaning of Section 101(21) of CERCLA, 42 U.S.C. §9601(21).

GENERAL ALLEGATIONS

8. The Site comprises approximately 25 acres used from 1959 to 1972 as a stump rendering facility by the Reasor Chemical Corporation ("Reasor"). Stump rendering facilities use

solvents to extract raw product such as turpentine, pine resin, and camphor from tree stumps. After it ceased operations, Reasor left a number of structures at the Site, including a boiler house, five unlined ponds, a scrap copper area, a surface drum disposal area and several drainage ditches.

9. Martin Marietta Corporation ("MMC") bought the Site and other property owned by Reasor in 1972. It appears that MMC intended to perform mining operations at the Site, but never did so. MMC did contract for the harvest of timber, installed some observation wells for the purpose of measuring water levels, and dismantled at least one structure.

10. MMMI assumed the liabilities of MMC related to the Site in November 1993.

11. MMMI, as successor to MMC, was an owner and/or operator of the Site at the time of disposal of hazardous substances within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

12. In August 1986, MMC sold the Site and surrounding property to Hilda C. Dill and Jane C. Sullivan, with each owning an undivided one-half interest in the property.

12. Sullivan and Dill are the current owners of the Site within the meaning of Section 107(a) (1) of CERCLA, 42 U.S.C. § 9607 (a) (1).

13. EPA conducted a site investigation in 1991 and then began response activities. Samples taken at the Site show elevated levels of hazardous substances, including acetone, benzene, and toluene in surface waters; benzene, toluene, xylene and phenol in groundwater; and copper, lead and dioxin in soils and sediments.

14. The Site was listed on the National Priorities List ("NPL") on September 5, 2002.

15. Benzene, copper, iron, lead, toluene, and total PAHs, all found at the Site, are

hazardous substances as defined in Section 101(14) of CERCLA, 42 U.S.C. § 9607(14).

16. On September 26, 2002, EPA issued a Record of Decision ("ROD") for the Site, selecting the remedy to address soil, surface water, sediment, and groundwater contamination.

17. The Remedial Design was completed in early 2004.

18. There were and are "releases" within the meaning of Section 101(22) of CERCLA, 42 U.S.C. §9601 (22), as well as the threat of continuing releases of hazardous substances, into the environment at and from the Site.

19. The Site is a "facility" within the meaning of Section 101(9) of CERCLA, 42 U.S.C. § 9601.

FIRST CLAIM FOR RELIEF

20. Paragraphs 1-19 are realleged and incorporated herein by reference.

21. Section 106(a) of CERCLA, 42 U.S.C. § 9606(a), provides in pertinent part:

In addition to any other action taken by a State or local government, when the President determines that there may be an imminent and substantial endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance from a facility, he may require the Attorney General of the United States to secure such relief as may be necessary to abate such danger or threat, and the district court of the United States in the district in which the threat occurs shall have jurisdiction to grant such relief as the public interest and the equities of the case may require.

22. By Executive Order 12580 of January 23, 1987, the President's functions under 106(a) of CERCLA, 42 U.S.C. 9606(a), have been delegated to the Administrator of EPA.

23. EPA has determined that there is or may be an imminent and substantial endangerment to the public health or welfare or the environment because of actual or threatened releases of hazardous substances from the Site.

24. The Defendants are liable for the injunctive relief to which the United States is entitled at the Site under Section 106(a) of CERCLA, 42 U.S.C. § 9606(a).

SECOND CLAIM FOR RELIEF

25. Paragraphs 1-19 are realleged and incorporated herein by reference.

26. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

(1) the owner and operator of a vessel or a facility, [and]

(2) any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of, . . .

shall be liable for –

(A) all costs of removal or remedial action incurred by the United States Government ... not inconsistent with the national contingency plan

27. The United States has incurred and will continue to incur costs of removal and remedial actions not inconsistent with the National Contingency Plan to respond to the release or threatened release of hazardous substances at and from the Site, within the meaning of Sections 101(23), (24), and (25) of CERCLA, 42 U.S.C. §§ 9601(23), (24), and (25).

28. The Defendants are liable, as the current owner or operator of the Site, or as the former owner or operator at the time of disposal of hazardous substances, to the United States for all response costs, including the costs of removal and remedial actions, incurred in the past and to be incurred in the future by the United States with respect to the Site, plus interest on the response costs, pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, the United States of America, respectfully requests that the Court:

1. Order MMMI and Sullivan and Dill to abate the threat posed by the release or threatened release of hazardous substances by performing the remedy selected by EPA in the ROD.
2. Award the United States a judgment against MMMI and Sullivan and Dill for all costs incurred by the United States in connection with the Site, plus interest;
3. Award the United States a declaratory judgment, pursuant to CERCLA Section 113(g)(2), 42 U.S.C. § 9613(g)(2), that MMMI and Sullivan and Dill are liable for all future costs incurred by the United States in connection with the Site. 7 7

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